

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
COURT FOR
AS
FILED
NOV 20 2000
CLERK, U.S. DISTRICT COURT
By [Signature]
Deputy

STEPHEN E. JONES, LINDA D.
LYDIA and CAROLINE FRANCO,
as Texas registered voters,

Plaintiffs,

VS.

GOVERNOR GEORGE W. BUSH
AND RICHARD B. CHENEY, as
candidates for President and Vice-
President of the United States of
America; ELTON BOMER,
as Texas Secretary of State; and
JOHN DOES 1-32, Texas Electors,

Defendants.

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**CIVIL ACTION NUMBER**  
**300 - CV 2543 - D**

**MEMORANDUM OF LAW IN SUPPORT OF**  
**EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF**

1. In only a few weeks, Texas is scheduled to cast its 32 electoral votes. Other electors will also meet on December 18, 2000 to decide who the next President will be.
2. Due to the serious constitutional violations alleged by Plaintiffs, and other citizens, it is imperative that a preliminary injunction, including temporary restraining order, be issued to preserve the status quo until a quick and final determination of the validity of the election can be made by this Court. Unless the Defendants are immediately enjoined, the electors will cast their votes illegally, and the Texas Secretary of State will wrongfully certify those votes to the United States Congress, enabling a possibly illegally elected president to be inaugurated in January.

3. A party seeking a preliminary injunction must establish these four well known factors: (1) a substantial likelihood of success on the merits; (2) a threat of irreparable injury; (3) that its own injury would outweigh the injury to the nonmovant; and (4) that the injunction would not disserve the public interest.

4. Plaintiff strongly believes that there is a substantial likelihood that he will prevail on the merits for the following reasons. The U.S. Constitution emphatically mandates that two individuals **cannot** inhabit the same state and be elected to the nation's two highest offices. Both Article II and the Twelfth Amendment state: "The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, **one of whom, at least, shall not be an inhabitant of the same state with themselves.**" (emphasis added)

5. For the reasons set forth in the accompanying Complaint, Plaintiff is substantially likely to be able to demonstrate that both Governor BUSH and Mr. CHENEY are Texas inhabitants and are thus ineligible candidates in Texas.

6. The definition of "inhabitant," according to *Black's Law Dictionary*, is "one who resides **actually and permanently** in a given place and has his domicile there." Quoting that definition, the Court in *Schreiner v. Schreiner*, 502 S.W.2d 840 (Civ.App.-San Antonio 1973, n.w.h.), equated the former 12 month domiciliary requirement with "inhabitancy." It went on to distinguish the harder to meet standard of inhabitancy and domicile from the less restrictive six month county residency requirements (now set forth in Section 3.21, *Texas Family Code*). The Texas Supreme Court relied on *Webster's* definition of "inhabitant" as "one who has a fixed residence, as distinguished from an occasional lodger or visitor." *Wakefield v. State*, 41 Tex. 556 (Sup.Ct. 1874). The law in Texas has always differentiated between the permanence of inhabitancy (and domicile) and mere residency.

7. Plaintiff intends to show that Mr. CHENEY acquired the permanency of being a Texas “inhabitant” in 1995, when he purchased and began living in a residence in Highland Park with his wife and started a new career running one of the largest oil related companies in the world from its headquarters in downtown Dallas. Plaintiff further intends to show that Mr. CHENEY is a *bona fide* Texas inhabitant at the present time.

8. For the last five years, Mr. CHENEY has been a Texas inhabitant in every conceivable way. He lived here, unless he was temporarily out of town on business or vacation. He received his mail here. He carried a Texas driver’s license and drove back and forth from Highland Park to downtown Dallas on Dallas roads in his Texas registered autos. He declared that he was a Texas resident probably hundreds of times during those years: on his U.S. income tax returns, Federal Election documents, annual Texas residential homestead exemptions, Texas driver’s license records, social security records, banking records, Republican Party records, mortgage loan applications, other loan applications, financial statements, personnel records, corporate records, other corporations’s official records, telephone service, residential utility service, questionnaires, financial records, credit card applications, rental car applications, voting and auto registration records (until recently), and on and on.

9. As evidence of just one of the countless ways Mr. CHENEY easily demonstrated that he is a Texas inhabitant, Plaintiff has attached as Exhibit “A” a certified copy of his Texas homestead exemption for his primary residence located at 3812 Euclid Avenue, Dallas, Texas that he has claimed since moving there in 1995 and continuing in 1996, 1997, 1998, 1999, and 2000.

10. Wyoming law also differentiates between a person’s “domicile” and “residence.” In *State ex rel. School Dist. No. 1, Niobrara County v. School Dist. No. 12, Niobrara County*, 45 Wyo.

365, 376, 18 P.2d 1010, 1013 (1933), “residence was given the more liberal interpretation, and “domicile “ being more narrowly defined as “the place where he has voluntarily fixed his habitation with a present intent to make it either his permanent home or his ~~h~~<sup>s</sup> home for the indefinite future.”

11. Mr. CHENEY certainly did not -- and could not -- make Wyoming his “domicile” while he lived in his multimillion dollar estate in Highland Park and was the CEO of Halliburton.

12. Mr. CHENEY claims that when he suddenly registered to vote on July 21<sup>st</sup> and later voted there, only under the incredible pressure of being offered the running mate’s job by a fellow Texan on July 3, 2000, he automatically became an inhabitant of Wyoming. He may have taken political advantage of the instant voter registration law, but he would not have qualified as a legal resident, let alone a legal inhabitant.

13. If Mr. CHENEY had wanted to run for political office, Section 22-5-102, Wyoming Statutes (1999) would **prohibit him from running for the state legislature until he had been a resident of a district for at least one year before his election.** Assuming for the sake of argument that he became a resident when he merely registered to vote on July 21, 2000 he would not even be permitted to run for the state legislature there **until July 20, 2001.**

14. Similarly, it is truly hard to believe that Mr. CHENEY suddenly surrendered his Texas driver’s license and/or auto registration -- apparently only after being sued in Florida for violating the Constitution by having these documents -- and expect the courts to believe that he had instantly become an inhabitant of Wyoming.

15. For example, under section 23-1-102(a)(ix), Wyoming Statutes (1977), “resident” for purposes of obtaining a game and fish license is “a United States citizen who has been a resident of Wyoming **for not less than one (1) year and who has not claimed residency elsewhere for any**

**purpose during that one (1) year period immediately preceding the date of application** for a license, permit or certificate. Having a Wyoming mailing address alone shall **not** prove Wyoming residency.” So Mr. CHENEY, who is **a** passionate about fishing, would not qualify for a fishing license either **until July 20, 2001**.

16. Finally, it will be a gross miscarriage of justice if the fact that he coincidentally owned another house in Jackson Hole, a ski resort with many “second homes” and even “third homes,” proves that he is an inhabitant of Wyoming. By analogy, many Texas skiers own vacation house in Colorado, but presumably none believe they are inhabitants of Colorado, when they do not live there, work there, send their children to school there, participate in local affairs, go to church there, pay state income and property tax there, and otherwise consider himself Coloradans.

17. Mr. CHENEY may argue that he has been a “resident” of both Texas and Wyoming during that period, but he does not even qualify for that less rigorous standard” under the very laws he now seeks to claim as his own. For example, Section 12-1-101 prevents any one who has resided in Wyoming for less than one year and who has not claimed residency elsewhere from obtaining an alcohol sales permit, again, **not until July 20, 2001**.

18. The standard test in Wyoming to even be a “resident” is a one year residency requirement *without* also residing during that period in another state.

19. The test to be an inhabitant or domiciliary is much higher. A change of address alone does not amount to a change of domicile. Such change must be with the intention of making that place the permanent residence. *Duxstad v. Duxstad*, 17 Wyo. 411, 100 P. 2d 112, 114 (1909).

20. When he went through the motions of obtaining or giving up a few pieces of paper, e.g. a Wyoming voting card or not having a Texas driver’s license, Mr. CHENEY obviously did not

automatically become an “inhabitant” of Wyoming for legal purposes.

21. It is difficult to become an inhabitant or domiciliary. As the Wyoming Supreme Court recently wrote: “Once a domicile is established, it continues until a new one is actually acquired.” *McDougall v. McDougall*, 961 P. 2d 382, 384 (Wyo. 1998).

22. The facts clearly show that Plaintiff has a substantial likelihood of prevailing on the merits. In sum, Mr. CHENEY, who coincidentally owned a second home in Jackson Hole, realized after he decided to accept the job as running mate on July 19<sup>th</sup> that he could not be a Texan and be legally elected. Looking around at possible states he could “move” to, he seemed to realize that Wyoming was his best bet. He suddenly flew there on July 20<sup>th</sup>, took advantage of its same day voter registration, flew home, and then accepted the job on July 25<sup>th</sup>. He only returned there briefly to campaign, then traveled on to the next campaign stop. He only flew there to vote, then flew home to watch the election returns in Texas.. After being sued in Florida, he suddenly listed his Texas home for sale on November 16<sup>th</sup> and has also allegedly just surrendered his driver’s license. However, he still lives in the Highland Park residence, still claims the 2000 Texas homestead exemption, and still lists Dallas as where he lives in every other respect.

23. The second requirement is that there exist the threat of irreparable injury. It is hard to imagine how a voter in an election for President and Vice-President would not be injured if Mr. CHENEY’s manipulation of Wyoming and Texas statutes works, and without even an *in camera* review of evidence, he and Governor BUSH are elected to the highest positions in the United States.

24. If these men have violated the Constitution, but are still inaugurated, the damage to this country’s laws and very soul will be devastating and irreparable. There will be no way the harm could be undone, unless the U.S. Congress or Supreme Court somehow decertified the 32 electoral votes.

Even if this were possible, the process would be undeniably loathsome, bitter, and slow. It is unlikely that this could be accomplished before January 20, 2001. The succession to President Clinton would be a political nightmare. One scenario shows that Strom Thurmond, as President Pro Tempore of the Senate, would become acting President.

25. Emotions in this past election have been heightened over the last year, and the messy recount in Florida has only intensified the fallout. The electorate has been bombarded for many years with government corruption and improprieties, from Watergate to Iran-Contra to Clarence Thomas's confirmation to broken campaign promises to President Clinton's impeachment and other scandals. Voters are already cynical and apathetic about the political process. Knowing that the President and Vice-President had been unconstitutionally elected would potentially taint all future elections and law enforcement in this country.

26. Third, the movant's injury would obviously outweigh the injury to the non-movants if a preliminary injunction is not granted. If the Texas electors are permitted to vote on December 18<sup>th</sup>, and their votes are permitted to be certified by the Texas Secretary of State, Plaintiff's injury is final and fatal.

27. On the other hand, even if the temporary restraining order is granted, the non-movants are not as injured if afforded the right to defend themselves in an expedited fashion. The Defendants are some of the most powerful and wealthiest men in Texas, if not the country, and are supported by many men and women with equal wealth and power. They will obviously have no trouble finding or affording capable legal talent to represent them and attempt to prove that Mr. CHENEY is an inhabitant of some state other than Texas.

28. Mr. CHENEY himself would presumably want an expedited hearing and a chance to prove

the legitimacy of his election before the electors meet to vote. He has already been sued in a similar suit in District Court in Florida, and may prefer that these cases be consolidated for trial rather than have to defend them individually.

29. Finally, the issuance of a preliminary injunction will not disserve the public interest. The exact opposite will occur. If the injunction is not issued, the election goes forward, and the President is unconstitutionally elected, the public interest will be destroyed, as noted above.

30. If, however, the status quo is preserved until such time as an evidentiary hearing can take place, voters will be reminded of the strength of our democracy, with its checks and balances and right of the citizen to be heard when he is aggrieved. By way of example, without the Supreme Court's ruling in the Pentagon Papers case, President Nixon would not have resigned.

31. Given the fact that the incoming Congress is almost evenly divided, but that the Republicans will hold a slight edge, it is difficult to believe that the legislative branch will undo the harm to the public interest if the election is tainted by fraud.

32. The judiciary is the only means to enforce the Constitution and protect the public against just these abuses of power. Both federal and state courts have already decided, and will continue to decide, the fate of Florida's electoral votes. Even there, no allegations that the U.S. Constitution has been violated have been made.

WHEREFORE, Plaintiff respectfully requests this Court to grant the relief requested in his Emergency Application for Injunctive Relief.

Dated this 20 day of November, 2000.



Respectfully submitted,

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By: 

**WILLIAM K. BERENSON**

State Bar No. 02184500



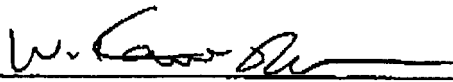
Dallas Central  
Appraisal District

CERTIFICATE OF AUTHENTICITY OF OFFICIAL RECORDS

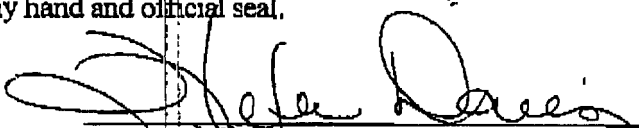
BEFORE ME, the undersigned official, on this day appeared, W. KENNETH NOLAN, who is personally known to me, and first being duly sworn according to law upon his oath deposed and said:

My name is W. KENNETH NOLAN, I am over 18 years of age. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

I am custodian of the records of the DALLAS CENTRAL APPRAISAL DISTRICT. Attached hereto are 3 pages of duplicate copies of official records from the District's Appraisal Records. These said pages of records are kept by the Appraisal District in the regular course of business, and it was the regular course of business of the Appraisal District for a representative of the District with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record; and the record was made at or near the time of receipt of same or reasonably soon thereafter. The records attached hereto are exact duplicates of the originals.

  
W. KENNETH NOLAN  
CUSTODIAN OF THE RECORDS

SUBSCRIBED AND SWORN TO BEFORE ME ON THE 15 day of Nov  
2000, to certify which witness my hand and official seal.

  
NOTARY PUBLIC in and for the State of Texas  
HELEN DAVIS  
Notary Public, State of Texas  
My Commission Expires  
Name Typed or Printed 1/2001

MAPAMR2

DALLAS CENTRAL APPRAISAL DISTRICT  
APPRAISAL ROLL YEAR 2000

VCSTAMR2  
11/15/2000  
TRM:DA14

ACCT # 60084500240110000

LEGAL DESCRIPTION

OWNERS NAME/ ADDRESS

HIGHLAND PARK

BLK 24 LT 11

CHENEY RICHARD B &

VOL95216/1326 DD110195 CO-DALLAS

LYNNE V CHENEY

0845002401100

16908450024

3812 EUCLID AVE

TX 752053102

ACREAGE

HIGHLAND PARK

MARKET VALUES

IMP 538270

LAND 1125000

MARKET 1663270

PROPERTY ADDRESS

3812

EUCLID

AVE

SPEC ASMT

CITY HIGHLAND PARK

CAPPED HS

TAXABLE VALUES

EXEMPTION FLAGS

COUNTY 1330616

AG ADJ

DB VET

CITY 1330616

HS X

SS

SCHOOL 1315616

DB

TOTAL CD

HOSPITAL 1330616

CEILING AMT

COLLEGE 1330616

CEILING DATE

SPECIAL

HISTORIC

PRESS (PF1) SEARCH MENU (PF2) PREVIOUS YEAR (PF7) SUMMARY (PF8) HISTORY MENU

MAPRS09

DALLAS CENTRAL APPRAISAL DISTRICT  
RESIDENTIAL EXEMPTION SUMMARY

VCSTRS09  
TRM:DA14  
11/15/2000

ACCOUNT # 60084500240110000

LOCATION ADDR: 3812 EUCLID AVE

EXEMPTIONS APPLIED FOR 2000 CERTIFIED VALUES

| ENTY        | GENERAL<br>HMSTD | %  | OPTIONAL<br>HMSTD | OVR 65<br>HMSTD | DISABLED<br>HMSTD | DISABLED<br>VETERAN | HISTORIC<br>EXMPTN | TAXABLE<br>VALUE |
|-------------|------------------|----|-------------------|-----------------|-------------------|---------------------|--------------------|------------------|
| CNTY:       |                  | 20 | 332654            |                 |                   |                     |                    | 1,330,616        |
| CITY:       |                  | 20 | 332654            |                 |                   |                     |                    | 1,330,616        |
| SCHL: 15000 |                  | 20 | 332654            |                 |                   |                     |                    | 1,315,616        |
| HOSP:       |                  | 20 | 332654            |                 |                   |                     |                    | 1,330,616        |
| COLL:       |                  | 20 | 332654            |                 |                   |                     |                    | 1,330,616        |
| SPD1:       |                  |    |                   |                 |                   |                     |                    |                  |

TOTALLY EXEMPT OVER 55 SURVIVING SPOUSE  
CAPPED HOMESTEAD AMT:

|        |       |      |        |        |
|--------|-------|------|--------|--------|
| PR FLG | DY TX | NAME | EF DTE | RMV DT |
| PR FLG | DY TX | NAME | EF DTE | RMV DT |
| PR FLG | DY TX | NAME | EF DTE | RMV DT |

PRESS (F1) SEARCH MENU (F2) RESI MENU (F3) NEXT SCREEN (F4) PREV SCREEN